IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.08.2007

CORAM:

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN
AND
THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

Tax Case(Appeal) No.588 of 2007 and
M.P.No.1 of 2007

M/s Sakthi Murugan Transports (P) Ltd.,
252, Mettupalayam Road
Coimbatore 641 042 .. Appellant /Respondent

-vs-

The Assistant Commissioner of Income Tax
Company Circle I (2)
Coimbatore 641 018. ..Respondent /Respondent

TAX CASE APPEAL filed under Section 260 A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, 'D' Bench, Chennai dated 10th March, 2006, in ITA No.2096/(Mds)/03, against the order of the Commissioner of Income-Tax (Appeals)I, Coimbatore dated 11.9.2003 in ITA.Nos.761/2001-02, against the orde of the Deputy Commissioner of Income-Tax Company Circle II (1) Coimbatore-18 dated 29/3/2001 and made in PAN/GIR.No.PQ-9118/CO.II/(1) CBE, for the Assesment year 1998-99.

For Appellant : Mr.Venkataranarayanan, Senior Counsel
for M/s Subbaraya Aiyar Padmanabhan
For Respondent: Mr.N.Muralikumar

J U D G M E N T
(Judgment of the Court was delivered by
K.RAVIRAJA PANDIAN,J)

Aggrieved by the order of the Income Tax Appellate Tribunal dated 10th March 2006 made in ITA No.2096/(Mds)/03, the appellant filed the present appeal.

2. The facts of the case culminated in the filing of the present appeal proceeds as follows:-

The Appellant is a Company engaged in the business of transport of goods as bulk carriers besides making investment in shares and securities from which dividend income was earned. For the assessment year 1998-99, the appellant originally filed return of income on 18.11.1998 declaring a total income of Rs.1,71,020/-. Subsequently, the appellant filed a revised return on 13.04.1999 admitting increased total income of Rs.42,32.320/-. Intimation under section 143(1) of the Income Tax Act was issued on 29.09.1999 accepting the revised return. Scrutiny assessment under section 143(3) was completed on 29.03.2001 determining the total income at Rs.1,05,67,810/-. In the assessment, the assessing officer disallowed the interest payment on the loan borrowed for purchase of shares and securities. Aggrieved over the same an appeal was filed before

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the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) held that interest provided in the accounts towards principal loan obtained for the purchase of shares and security cannot be regarded as an allowable expenditure, but interest paid on interest which is accrued on earlier loans and utilised in the business is allowable as business expenditure since the appellant is not only an investor but also is carrying on the business of transport. The Revenue carried that order on appeal before the Tribunal. The Tribunal set aside the order of the Commissioner of Income Tax (Appeals) and restored the assessment order. The correctness of the same is now canvassed before us by formulating the two questions of law, which are as follows:-

> "1) Whether on the facts and in the circumstances of the case the Tribunal erred in not holding that only interest payable on the loan amount utilised for acquisition of shares can be attributed to earning of dividend and not on unpaid interest on such loans which were retained and utilised in the business of the Appellant?
>
> 2) Whether on the facts and in the circumstances of the case the Tribunal was right in law in holding that the accumulated but unpaid interest on borrowings utilised in the business of transport is not a business expenditure?"

3. We heard the argument of the counsel for the appellant and perused the material on record.

4. It is admitted fact that the appellant/assessee borrowed loans for the purpose of making investment in shares and securities. It is obvious that the dividend income received by the appellant/assessee is exempted from tax under Section 10(33) of the Income-tax Act. It is also not in dispute that that the expenditure incurred for earning an exempted income is not an allowable expenditure. We are not able to accept the case of the appellant that the interest on the principal amount was not paid back to the debtor, but utilsied in the business. Had the interest been paid back to the debtor, the appellant ought to have borrowed money from outside agencies for its business. Therefore, the interest on the accumulated interest, which was utilised for the purpose of business is an allowable expenditure for the reason that the amounts were borrowed for the purpose of investing in shares and securities for the purpose of earning an exempted income. As per Section 14-A of the Act, the expenditure incurred on earning the exempted income is not an allowable deduction. It is not the case of the appellant that the loan was an interest free loan. The action of the appellant in repaying the principal amount but retaining the interest and paying the interest for the retained interest would otherwise amount to or constitute that the loan transaction would still continue. We are also not able to accept the contention of the appellant that the interest on the retained interest was a business expenditure, since the loan borrowed by the appellant continues to be the loan borrowed for the purpose of earning income which is exempted under Section 10(33) of the Income-tax Act.

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5. For the above said reasons, we find that no question of law much less substantial questions of law involved so as to entertain the appeal. The appeal is dismissed. Consequently, connected miscellaneous petition is also dismissed.

rg/usk

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Assistant Registrar, Income-tax Appellate Tribunal,
   'D' Bench, III Floor, Rajaji Bhavan, Besant Nagar, Madras 90

2. The Commissioner of Income-tax (Appeals)-I, Coimbatore.

3. The Deputy Commissioner of Income Tax, Company Circle
   II(I), Coimbatore-18.

4. The Asst. Commissioner of Income-Tax, Company Circle-I (2),
   Coimbatore-18.

+1 cc to Mr.N.Muralikumaran, Sr.Standing Counsel
for Income-Tax Sr.No.51526.

BV(CO)
dcp/5.9

T.C(A)No.588 of 2007 and
M.P.No.1 of 2007

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